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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PEST COMMITTEE, a Nevada Ballot Advocacy Group; TONY BADILLO, an individual; JACK LIPSMAN, an individual; AL MAURICE, an individual, KENNY BLACKMAN, an individual, WE THE PEOPLE, a Nevada Ballot Advocacy Group, and the CITIZENS IN CHARGE, A Virginia Foundation Plaintiffs, v. ROSS MILLER, in his official capacity as Secretary of State for the State of Nevada, Defendant.	Case No. 2:08-cv-01248-RLH-GWF **ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant, Secretary of State Ross Miller, by and through counsel, Catherine Cortez Masto, Attorney General for the State of Nevada, and Senior Deputy Attorney General, Nhu Q. Nguyen, hereby submits this Answer to the First Amended Complaint for Declaratory and Injunctive Relief filed by PEST Committee, Tony Badillo, Jack Lipsman, Al Maurice, Kenny Blackman, We the People, and Citizens in Charge (collectively “Plaintiffs”).

INTRODUCTION

1. The Secretary admits that in the year 2008, there were approximately fifteen initiative petitions filed with the Office of the Secretary of State, and that some of these initiative petitions were challenged in a court of law for violation of NRS 295.009. Based on

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information and belief, less than twelve of the initiative petitions were challenged in a court of law for violating NRS 295.009, and as such, the Secretary denies the allegation that twelve initiative petitions were challenged in a court of law for violating NRS 295.009. The Secretary admits NRS 295.009 requires an initiative petition to "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto" and that the initiative petition "[s]et forth, in not more than 200 words, a description of effect of the initiative." The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

2. The Secretary denies NRS 295.009 violates the United States Constitution. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

3. The Secretary admits an initiative petition entitled "Prevent Employers from Seizing Tips" was filed with the Office of the Secretary of State on January 16, 2008, and was challenged in Nevada state court on February 7, 2008, by Nevada Resort Association; Retail Association of Nevada; Wynn Las Vegas, LLC; Nevada Motor Transport Association; Nevada Manufacturers Association; Nevada Tavern Owner's Association; and Culinary Worker's Union. The Secretary admits the PEST Committee, Tony Badillo, Jack Lipsman, and Al Maurice attempted to remove the matter to federal court, but the matter was remanded. The Secretary admits Nevada Resort Association; Retail Association of Nevada; Wynn Las Vegas, LLC; Nevada Motor Transport Association; Nevada Manufacturers Association; Nevada Tavern Owner's Association; and Culinary Worker's Union filed a motion for attorney's fees, which they subsequently withdrew. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

JURISDICTION AND VENUE

4. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

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5. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

6. The Secretary admits the deadline for proponents of the initiative petition entitled "Prevent Employers from Seizing Tips," filed with the office of the Secretary of State on September 16, 2008, to submit signatures for verification was November 11, 2008. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

7. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

8. The Secretary admits Plaintiffs are not seeking damages. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

9. The Secretary denies the allegations.

THE PARTIES

10. The Secretary admits that PEST Committee is a ballot advocacy group that has filed papers with the Office of the Secretary of State. The Secretary admits the PEST Committee filed an initiative petition on January 16, 2008, withdrew it on August 6, 2008, and affirmatively avers that PEST Committee filed a second initiative petition on September 19, 2008.

11. Pursuant to the Statement of Organization filed with the Office of the Secretary of State on January 4, 2008, the Secretary admits Tony Badillo is the Resident Agent of the PEST Committee Ballot Advocacy Group. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

12. Pursuant to the Statement of Organization filed with the Office of the Secretary of State on January 4, 2008, the Secretary admits Al Maurice is listed as the Director of LUGE. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

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13. Pursuant to the Statement of Organization filed with the Office of the Secretary of State on January 4, 2008, the Secretary admits Jack Lipsman is listed as the Vice President of LUGE. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

14. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

15. The Secretary admits We the People is a ballot advocacy group that filed a Statement of Organization with the Office of the Secretary of State on September 4, 2007. The Secretary admits We the People has filed initiative petitions with the Office of the Secretary of State, and that some of the initiative petitions were challenged in court for violating NRS 295.009. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

16. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

17. The Secretary admits he is the duly elected Secretary of State of Nevada. The Secretary admits Plaintiffs are suing him in his official capacity and denies any wrongdoing in such capacity.

STATEMENT OF FACTS

18. The Secretary admits an initiative petition entitled "Prevent Employers from Seizing Tips" was filed with the Office of the Secretary of State on January 16, 2008, and was challenged in Nevada state court on February 7, 2008, by Nevada Resort Association; Retail Association of Nevada; Wynn Las Vegas, LLC; Nevada Motor Transport Association; Nevada Manufacturers Association; Nevada Tavern Owner's Association; and Culinary Worker's Union. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

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19. The Secretary admits NRS 295.061 permits any party to file a legal challenge against an initiative petition in state court. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

20. The Secretary admits NRS 295.061 permits any party to file a legal challenge against an initiative petition in state court. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

21. The Secretary admits an initiative petition entitled "Prevent Employers from Seizing Tips" was filed with the Office of the Secretary of State on January 16, 2008, and was challenged in Nevada state court on February 7, 2008, by Nevada Resort Association; Retail Association of Nevada; Wynn Las Vegas, LLC; Nevada Motor Transport Association; Nevada Manufacturers Association; Nevada Tavern Owner's Association; and Culinary Worker's Union. The Secretary admits the PEST Committee, Tony Badillo, Jack Lipsman, and Al Maurice attempted to remove the matter to federal court, but the removal issue was fully briefed on July 15, 2008; the federal court remanded the matter to state court. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

22. The Secretary admits the federal court entered a seven-page order remanding the case on July 15, 2008, in Case No. 3:08-cv-00118, and that the order speaks for itself. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

23. The Secretary admits in Case No. 3:08-cv-00118, the Nevada Resort Association; Retail Association of Nevada; Wynn Las Vegas, LLC; Nevada Motor Transport Association; Nevada Manufacturers Association; Nevada Tavern Owner's Association; and Culinary Worker's Union filed a motion for attorney's fees after the matter was remanded to

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state court. The Secretary admits the motion for attorney's fees was subsequently withdrawn. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

24. The Secretary admits an initiative petition entitled "Prevent Employers from Seizing Tips" was filed with his office on September 19, 2008. Based on information and belief, the Secretary denies that any party filed a challenge in court against the initiative petition. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

25. The Secretary admits this Complaint seeks declaratory and injunctive relief. The Secretary denies NRS 295.009 and NRS 295.061 are unconstitutional or has any chilling effect and denies the allegations.

26. The Secretary denies the allegations.

27. The Secretary denies the allegations.

28. The Secretary admits that some initiative petitions filed with his office since 2005 have been challenged in court. The Secretary denies that NRS 295.009 and 295.061 are unconstitutional. The Secretary denies that the First Judicial District Court in the State of Nevada is an improper forum for legal challenges to the initiative petitions.

29. The Secretary denies that the Nevada statutes governing the initiative petition process presents any unconstitutional barrier. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

30. The Secretary admits the First Judicial District in the State of Nevada comprises of Carson City and Storey County. The Secretary admits the Nevada state capital is Carson City. The Secretary admits one of his main offices in Nevada is in Carson City. The Secretary admits the First Judicial District has two district judges. The Secretary denies the implication that the First Judicial District Judges or any Nevada State Judges are unqualified to render their decisions. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

31. The Secretary denies the initiative petition process in Nevada is unconstitutional. The Secretary denies the implication that Nevada state court decisions are rendered without any basis in law or fact. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

A. History of the Single Subject Rule (NRS 295.009)

32. NRS 295.009 and NRS 295.061 speak for themselves and require no response.

33. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

34. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

35. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

36. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

37. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

38. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

39. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

40. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

41. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

42. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

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43. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

B. The Legal Challenges to Initiatives Using the Single Subject Rule

44. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

45. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

46. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

47. The Secretary admits numerous groups have submitted various initiative petitions for filing with his office.

48. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

49. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

50. The Secretary admits his office filed the "Save Our Schools with Additional Funding" initiative petition on November 19, 2007, which was subsequently challenged in Nevada state court. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

51. The Secretary admits Nevada State Senior Justice Miriam Shearing resolved the legal challenge to the "Save Our Schools with Additional Funding" initiative petition. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

52. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

53. The Secretary admits his office filed the "It's Time for Gaming's Fair Share" and "It's Time for Gaming's Fair Share and Eliminate Property Taxes" initiative petitions on

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December 12, 2007, which were subsequently challenged in Nevada state court. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

54. The Secretary admits Nevada State District Judge William A. Maddox resolved the legal challenge to the "It's Time for Gaming's Fair Share" and "It's Time for Gaming's Fair Share and Eliminate Property Taxes" initiative petitions. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

55. The Secretary admits an initiative petition entitled "Prevent Employers from Seizing Tips" was filed with the Office of the Secretary of State on January 16, 2008, and was challenged in Nevada state court on February 7, 2008, by Nevada Resort Association; Retail Association of Nevada; Wynn Las Vegas, LLC; Nevada Motor Transport Association; Nevada Manufacturers Association; Nevada Tavern Owner's Association; and Culinary Worker's Union. The Secretary admits the PEST Committee, Tony Badillo, Jack Lipsman, and Al Maurice attempted to remove the matter to federal court, but the matter was remanded and that the order remanding the matter speaks for itself. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

56. The Secretary admits his office filed the "Clean and Open Government Amendment" and "Tax Backed Lobbying Plan" initiative petitions on February 25, 2008; "Education Enhancement Act" and "Funding Nevada's Priorities Act" initiative petitions on February 29, 2008; and "Nevada Taxpayers Protection Act" initiative petition on March 5, 2008. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

57. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

58. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

59. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

C. **The Constitutional Deficiencies of NRS 295.009 and NRS 295.061**

60. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

61. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

62. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

63. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

64. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

65. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

66. The Secretary admits his office will withdraw initiative petitions at the proponents' requests or pursuant to a court order. The Secretary denies his office has ever withdrawn initiative petitions arbitrarily. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

67. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

68. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

69. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

70. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

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71. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

72. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

FIRST CLAIM FOR RELIEF

73. This is an incorporation of the allegations that requires no response.

74. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

75. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

76. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

77. The Secretary denies NRS 295.009 and NRS 295.061 are vague and overbroad, and denies he abuses any enforcement authority given to him by statute.

78. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

79. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

80. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

81. The Secretary denies.

82. The Secretary denies.

83. The Secretary denies.

84. The Secretary denies.

85. The Secretary denies.

86. The Secretary denies.

87. The Secretary denies.

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88. The Secretary denies NRS 295.009 and NRS 295.061 are unconstitutional. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

89. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

SECOND CLAIM FOR RELIEF

90. This is an incorporation of the allegations that requires no response.

91. This is an allegation of law for which no responsive pleading is required and the allegation is therefore denied.

92. The Secretary admits NRS 295.0575 and NAC 295.020 requires the submission of the affidavit of the circulator of an initiative petition for signatures to submit an affidavit when submitting the signatures the circulator has collected. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore denies them.

93. The Secretary denies the requirements of NRS 295.0575 and NAC 295.020 are unconstitutional. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

94. The Secretary denies the requirements of NRS 295.0575 and NAC 295.020 are unconstitutional. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

95. The Secretary denies the requirements of NRS 295.0575 and NAC 295.020 are unconstitutional. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

96. The Secretary denies the requirements of NRS 295.0575 and NAC 295.020 are unconstitutional. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

97. The Secretary denies the allegations.

98. The Secretary denies the allegations.

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99. The Secretary denies the requirements of NRS 295.0575 and NAC 295.020 are unconstitutional. The Secretary lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations and therefore denies them.

100. The Secretary denies Plaintiffs are entitled to their requested relief.

FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint for Declaratory and Injunctive Relief fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, are the result of their own acts, and they are solely responsible for the matters alleged.

THIRD AFFIRMATIVE DEFENSE

Based on information and belief, the Secretary alleges that Plaintiffs failed to mitigate their damages, if any.

FOURTH AFFIRMATIVE DEFENSE

The Secretary was not personally involved and/or the cause in fact and proximate cause of Plaintiffs' alleged deprivations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claim is barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

The Secretary acted at all relevant times in good faith toward Plaintiffs. Thus the Secretary is entitled to qualified good faith immunity from damages.

SEVENTH AFFIRMATIVE DEFENSE

The Secretary is immune from liability as a matter of law.

EIGHTH AFFIRMATIVE DEFENSE

This action is barred against the Secretary pursuant to Chapter 41 of the Nevada Revised Statutes and the Eleventh Amendment to the United States Constitution.

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NINTH AFFIRMATIVE DEFENSE

The Secretary alleges that at the time of filing this Answer, all possible affirmative defenses may not have been alleged pending the development of sufficient facts after reasonable inquiry; therefore, the Secretary reserves the right to amend this Answer to allege additional affirmative defenses if warranted by subsequent investigation.

WHEREFORE, the Secretary prays that:

1. Judgment be rendered in accordance with the law;

2. The Secretary be awarded costs of suit incurred herein, including reasonable attorney fees; and

3. The Secretary be awarded such other and further relief as the Court may deem just and proper.

DATED this 9th day of December, 2008.

CATHERINE CORTEZ MASTO
Attorney General

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CERTIFICATE OF MAILING

I, Rosiland Hooper, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 9th day of December, 2008, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the foregoing **ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**, addressed to the following:

Kermitt L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, Nevada 89101

/s/ Rosiland M. Hooper
Rosiland M. Hooper, LS II, an employee
of the Office of the Nevada Attorney General